

Statement of Admiral James Loy
Acting Under Secretary of Transportation for Security
Before the Senate Commerce, Science and Transportation Committee
United States Senate – September 10, 2002

Good Morning Mr. Chairman, Senator McCain, and Members of the Committee. I am pleased to testify before this Committee in a new role as the Acting Under Secretary of Transportation for Security and the head of the Transportation Security Administration (TSA). As you commented at the July 25th hearing, Mr. Chairman, when I accompanied Secretary Mineta and Deputy Secretary Jackson, I am adjusting to wearing a business suit rather than my familiar Coast Guard uniform, but I am the same person – focused entirely on the mission that the Secretary has assigned to me – assuring the security of our Nation's transportation systems.

I appear before this Committee today with a heavy heart and with added determination. I am mindful that tomorrow is the first anniversary of that terrible day when so many Americans lost their lives as part of the war that terrorists have declared on America. My heart goes out to the families, friends and loved ones of those who perished on September 11. Their loss has steeled our determination to do our duty and to fulfill the responsibilities that the President, Congress, and the American people have entrusted with us. We will not fail you.

This Committee is very aware of the challenges that are facing TSA. We are building a world-class agency from scratch, assuming new Federal functions and implementing our responsibilities under stringent deadlines, and we are doing so in the glare of the public spotlight. This is highlighted by the series of articles that appear in the press throughout the country virtually every day. I am proud of our performance so far, of the dedication of our employees and contractors, and I am grateful for the support from our many stakeholders and from this Committee. I particularly appreciate the welcome letter I received from you, Mr. Chairman, as well as those from Chairman Young and Chairman Rogers from the House of Representatives.

When I assumed the helm at TSA I was concerned about the perception of TSA among our stakeholders as an aloof or arrogant agency that had only one way of doing business – “My way or the highway.” I have dedicated much of my efforts over the past seven weeks in building relationships with these stakeholders to assure them that TSA fully expects to work in a collaborative arrangement with all of the stakeholders who have interests in the national transportation system. While the primary focus this first year has been in the aviation arena, TSA is also working diligently with the stakeholders concerned with maritime and land transportation security. I am pleased that I have an outstanding leader in this field, retired ADM Richard Bennis, to head this important office within TSA.

As an indication of my outreach efforts since I became Acting Under Secretary seven weeks ago, I have visited a number of airports across the country from Logan International Airport in Massachusetts to Seattle-Tacoma International Airport in Washington. I have met with numerous Airport Directors including those at Logan International Airport, LaGuardia Airport, Newark International Airport, Hartsfield Atlanta International Airport, Dallas-Fort Worth

International Airport, Miami International Airport, Seattle-Tacoma International Airport, San Francisco International Airport, and Los Angeles International Airport, among others. I held meetings with the CEOs and other senior officials from a number of air carriers including American Airlines, Delta Airlines, Southwest Airlines, Alaska Airlines, AirTran Airways, and Miami Air, a large charter operation in Southern Florida. I look forward to meeting other airport directors and carriers as I continue my outreach efforts with site visits in the coming months. While in town, I have met with Carol Hallet of the Air Transport Association (ATA) several times, Chip Barclay of the American Association of Airport Executives (AAAE), David Plavin of the Airport Council International – North America, the Air Line Pilots Association and the General Aviation Manufacturers Association (GAMA), and just last week I met with the Regional Airline Association and the Air Carrier Association of America. Yesterday I met with Phil Boyer from the Aircraft Owners and Pilots Association (AOPA). I have also been fortunate enough to participate in two in-depth meetings with numerous Airport Directors to discuss overarching issues as well as specific concerns regarding the work TSA is conducting in airports across the country. I am also grateful to have had the opportunity to spend some time with the Victims of Pan Am Flight 103, an organization representing many of the families of the victims of that terrible tragedy. I have also met with many Members of Congress and I intend to do more of that. In each case I heard from these important stakeholders about their concerns and what their suggestions are on how TSA should interact with them.

TSA has made great progress since its inception. As of this week we will have deployed federal screeners to almost 100 airports. This includes 23 airports that we transitioned from contract screeners to federal screeners in part or in full last week. This week alone we are engaged in deploying federal screeners at all or portions of 11 more airports including airports in a number in states represented by Members of this Committee such as San Antonio International Airport in Texas; Richmond International Airport in Virginia; Portland International Airport in Maine and portions of Logan International Airport in Massachusetts. I might add that two weeks ago we deployed federal screeners at Charleston International Airport in the Chairman's home state of South Carolina. By the end of August we had hired 26,845 screeners. That number should increase to approximately 32,000 by the end of this week. These screeners have been carefully selected and must pass stringent qualifying tests. Many applicants have not made the grade. Those that have are well trained for their important responsibilities. If Congress provides the budget resources and operational flexibility requested by the President, I am confident that we will meet the November 19 deadline for providing for federal screeners at all commercial airports in the United States. ¹

The December 31 deadline for screening all checked baggage for explosives by using explosive detection systems (EDS) is more difficult. This Committee is well aware of the concerns raised by some airport operators that pressing forward with the December 31 deadline will result in unacceptable delays for airline passengers and added costs for airports. However, I must balance the concerns of the airport operators with the very real security concerns that this Committee expressed when it wrote this provision into law. We are under threat from terrorists who have made it clear that they will stop at nothing to kill Americans, to damage our economy, and to destroy our confidence in our ability to move freely about the country and around the world. Therefore, I do not support a wholesale delay in the December 31 deadline. We must deploy

explosive detection systems at all of our airports as soon as possible. I will work with each airport to invest wisely in the solution that best meets the intent of the law. The December 31 deadline enables us to focus our efforts. In a small number of airports it may be necessary to push back the deadline for a modest amount of time, while temporarily putting in place other methods of screening checked baggage. Mr. Chairman, I would like to work with you and this Committee on a solution that fits within the context of a raised security paradigm throughout the aviation system.

I would like to take this opportunity to debunk some of the inaccurate and inflammatory reporting that has been recently published regarding the Federal Air Marshal (FAM) service. This reporting has dishonored the thousands of men and women who are selflessly protecting our travelers today and every day. My staff has previously provided some Members with a closed briefing on the FAM service. I will offer you another closed briefing if you believe it would be helpful. Contrary to these press reports we do not have a high attrition rate, nor do we have a lack of ammunition, nor do we have unqualified FAMs, nor do we have FAMs that are not assigned to flights for weeks at a time. I do agree that being a FAM is a difficult job. For some who volunteered for this demanding position it is not what they expected it to be. I fully understand and respect that. For those disappointed individuals we can come to an honorable parting of the ways. I am proud to state that for the overwhelming majority of the dedicated Americans who responded to the tragedies of September 11 and the call to service by joining the FAM service, they are quiet professionals doing their duty. TSA is completely supporting them and they completely support aviation security. This Committee and the traveling public should understand that the FAM service is providing the largest, highest-quality, best trained, and most professional protective force in American aviation history.

I am also pleased with the progress we have made in hiring 158 Federal Security Directors (FSDs) that will be deployed at our largest airports. As of now, we have 147 FSDs on board. Those FSDs will in turn have 105 Deputy FSDs who will assist with the management of some of the smaller airports. As of late August we had made job offers to candidates for 45 of these positions. This data changes every day as we continue to recruit and fill these important positions. I realize that some Members of this Committee have expressed concern about the length of time it took to recruit, hire, train and deploy FSDs for particular airports. I understand the concern but this process has actually gone remarkably well considering the number and location of the airports and the fact that all of the individuals we selected were employed in other important jobs. I expect to complete the process of hiring FSDs and their key support staff very soon. I encourage you to meet with the FSDs that are assigned to airports in your respective states. They are also available to assist your staffs in resolving constituent issues concerning airport security. I am sure they will be happy to arrange tours of the airport security facilities at an appropriate time.

As part of my plan to bring common sense into the aviation security area I have charged my staff with taking aggressive steps to reduce the "hassle factor" at airports and eliminate what I call "unnecessary rules." I have revised the policy on passengers carrying beverages through security screening checkpoints. We will now allow paper or foam polystyrene cups to pass with the passenger through the metal detectors. Factory sealed or closed plastic, metal, glass, or ceramic

containers are permitted through the x-ray machines. We will not, however, allow open cans of soda or other beverages through the screening checkpoints. We are also reminding all of our screeners, including both TSA screeners and contract screeners, that they are prohibited from asking passengers to drink or eat from any containers of liquid or food as a security clearance procedure.

A second common sense change that we have made is to eliminate the 16-year-old questions asked at ticket counters and at curbside check-in whether the passengers had control of the bags at all times or had been asked by others to include items in their bags. These questions have not proven to enhance security. By eliminating them we will speed up the check-in procedure so we can then more quickly move the passengers to the secure areas of the airport.

We have also published very clear guidance on our website for the traveling public to use. This easily understandable, yet comprehensive guidance, separately lists prohibited items that passengers may not bring through security checkpoints and onto airliners and also items that are permitted in aircraft cabins. It contains guidance on travel for people with disabilities and guidelines on traveling with children, as well as information on boarding aircraft, and general “Dos and Don’ts” for travelers. This is excellent information that I encourage all travelers to read. We also have standardized signs at airports nationwide at the screening checkpoints, reminding passengers of the prohibited items. Notwithstanding the public availability of this information in advance, our airport screeners are still intercepting large numbers of prohibited items. Our field reports state that in July of this year alone we intercepted at least 122,763 knives, 234,575 other types of prohibited cutting devices, 4,631 box cutters, 5,201 incendiary devices, and 228 firearms through passenger security screening. From February 2002 through July we have intercepted a total of more than 2,300,000 prohibited items. Mr. Chairman, these numbers speak volumes about the public’s continued confusion on what is prohibited from air travel under current circumstances. TSA will continue to publicize this information to better educate the flying public. We are partnering with aviation stakeholders to help communicate these messages.

I will continue to challenge my staff, and our stakeholders, to point out other unnecessary rules that we can eliminate or modify, while not diminishing our security posture.

I know that this Committee is very interested in our moving forward with a trusted traveler program, which you have given me the authority to implement. I am going to refer to this program from now on as the “registered traveler” program. I am convinced that we can balance the needs of security with common sense for those who agree to register for this program and submit to a detailed background check. Frequent fliers make up a large percentage of the air traveling public. By enrolling many of these frequent fliers as registered travelers all air travelers can benefit. First of all, for those who register with the program and pass scrutiny, we will know more about them from a security standpoint than anonymous passengers who present themselves to our screeners at the airport. This enhances aviation security. Secondly, by allowing the registered travelers to pass more quickly into the secured areas, this will ease congestion at the checkpoints and reduce overall waiting times for the registered travelers and for the traveling public that does not participate in the registered traveler program. Third, we will be able to

reduce the hassle factor for those registered travelers. Finally, by implementing a registered traveler program we may be able to better utilize our airport workforce.

However, our ability to move forward with a registered traveler program at this time is hampered by the restrictions that the Appropriations Committees placed on our plans to move forward with a Transportation Worker Identification Card (TWIC). The Conference Report on the Supplemental Appropriations Act directs that TSA not proceed with any further plans to implement a TWIC. This impacts on our plans to use a similar type of card for registered travelers. Mr. Chairman and Senator McCain, I would like to work with this Committee and with the Appropriations Committees to remove this obstacle.

I also would like to report progress on a matter that I know is of great concern to this Committee. That is the strengthening of cockpit doors to prevent forced entry into an aircraft's cockpit. You are aware that this project is the responsibility of the Federal Aviation Administration (FAA) although obviously, from a security standpoint, TSA has a great interest in ensuring that the project is successfully concluded. FAA has advised me that they are well on the way to approving designs for a retrofit of the cockpit doors for many airplanes and they expect to approve the designs for almost all of the remainder during the fall. Aircraft manufacturers are producing the required cockpit door kits. The key issue comes down to scheduling the aircraft to be out of service for the several days necessary to install the new equipment. Given today's market conditions, air carriers want to make sure they do not take aircraft out of service to the detriment of their business. The addition of bolts, locks, and bars to cockpit doors has already substantially increased cockpit security. The completion of this task will alleviate any continuing concern that this Committee may have had about this issue of aviation security. By the way, Mr. Chairman, I agree with your views that once the plane leaves the gate the doors must remain shut, save for essential access only. That is our policy and we shall enforce it.

I would like to discuss the status of the TSA budget. We were disappointed with the reduced funding provided in the recently approved FY 2002 supplemental appropriations. Upon approval of the supplemental, however, we moved quickly to review our budget and decrease our estimates to the approved level. We will closely monitor our expenditures and control costs as we continue our airport rollout operations over the next few months.

Our success in FY 2003 is largely dependent on receiving the \$4.8 billion in funds the President requested for TSA, plus an additional \$546 million in funds in the budget amendment forwarded to the Congress last week. My staff and I will work closely with the Appropriations Committees on the entire FY 2003 budget. I pledge to cooperate fully with the Committees as they finalize FY 2003 TSA appropriations. I would be grateful for the support of this Committee for our TSA budget request as the appropriations process moves ahead.

I would also appreciate support from this Committee in ensuring that the cap on hiring more than 45,000 full-time permanent employees does not carry over to the FY 2003 appropriation. While we can manage within that cap during FY 2002, we would simply be unable to meet our core statutory requirements of the law for baggage screening if this limit remains in place past this month. If this limit remains, we would halt plans for hiring baggage screeners, and would likely

be forced to warehouse EDS equipment that is now on order.

An advantage of being a start-up organization is that TSA was able to begin tackling its mission with a clean slate, allowing us the ability to design and implement an organization dedicated to excellence from day one. We will have an outstanding and diverse workforce of employees that are working for us because of their commitment to protecting the American people. TSA is committed to being a performance-based organization, that is an organization whose culture establishes performance expectations that support the mission; drives those expectations into organizational and individual performance goals; and collects data to assess our performance. We have fielded an interim Performance Measurement Information System (PMIS) to facilitate this commitment. The PMIS provides timely information to help ensure we meet our mandate to federalize transportation security. This same system is also providing information on security activities in the field and supports our airport Federal Security Directors as they manage their operations.

I would now like to briefly address our research and development program. I know that the Members of this Committee are very interested in ensuring that we are developing the best possible technology to use in transportation security and that we are investing in equipment that enhances security while effectively using the taxpayer's money. We are making progress in this area, although there clearly is no "magic bullet" on the near-term horizon. TSA is leading efforts to develop next generation technologies for use at airport checkpoints and to inspect checked bags. We are developing methods to help us control access to airport perimeters and ensure that only authorized people are allowed in secure areas. We are continuing our efforts to optimize human performance by improving screener selection, training and evaluation methods. In addition we are beginning to expand our research efforts in order to assess the terrorist threat to all transportation modes, particularly as it relates to cargo. We expect these R&D efforts to result in our ability to test and phase in new generations of equipment over the next 2 to 7 years. During Fiscal Year 2003 we plan to invest an additional \$130.4 million dollars in our R&D program. I would like to highlight two aspects of our R&D program: the development of the CAPPS II system and the development of the "EDS Next Generation" of explosive detection systems. In Fiscal Year 2002 TSA devoted \$45 million to CAPPS II. We have programmed an additional \$35 million for Fiscal Year 2003. For the EDS Next Generation we are seeking \$100 million in Fiscal Year 2003. Fifty million dollars of that amount is contained in the President's initial budget submission for TSA. The other \$50 million is in the Budget Amendment for Fiscal Year 2003 that the President recently released to the Congress.

I would now like to turn to an area of great controversy in the Congress and in the public's eye. That is the issue of arming pilots with firearms to defend the flight deck of commercial airliners. I realize that this is a very emotional issue and that reasonable people can differ on how best to provide the full measure of security on commercial airliners that our Nation deserves. I also realize that there is overwhelming support for this proposition in the Congress. Secretary Mineta and former Under Secretary Magaw previously announced their opposition to this proposal. When Secretary Mineta testified before this Committee on July 25 he informed you that he had asked me to take a fresh look at this issue, particularly in view of the overwhelming approval of the legislative proposal by the House of Representatives. I agreed to do so. I convened a task

force of knowledgeable law enforcement and aviation officials from a number of federal agencies including the U.S. Secret Service, the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco and Firearms, and the Federal Aviation Administration, as well as representatives from the Federal Air Marshal service within TSA and several individuals under contract to federal agencies who are licensed commercial pilots.

This task force recently presented its recommendations to me. I have to tell you that it is the recommendation of the task force that pilots not be armed with either lethal or less-than-lethal weapons. However, the task force advised that if pilots are armed, it should be through a carefully controlled, systematically planned test program and that the pilots receive personal firearms that can be calibrated to their individual use. Furthermore, to prevent pilots from having to openly transport firearms through secure airport areas and in off-site locations where pilots may overnight between flights, the task force recommended a lock-box system for carrying the weapons. The firearm would fit into a sleeve installed within the cockpit. Were the pilot to leave the flight deck for personal or flight related reasons, the pilot would be required to secure the firearm again in the lock-box. Thus, the firearm would only be available for use on the flight deck during flight operations, as intended.

As I advised the Chairman and Senator McCain in my letter of September 5, 2002, I remain concerned that questions that deserve serious attention have not yet been adequately addressed in the bills that passed both the House and Senate. For example, the cost of the program, which will be very expensive, must be considered. Who will pay these costs? The federal government through discretionary appropriations, the airlines that employ the pilots, or the pilots that volunteer for the program? There are serious liability issues involved should an incident occur that gives rise to legal action. There are critical issues of international jurisdiction in addressing armed pilots carrying weapons on international flights into other countries where their laws do not provide for armed pilots either on the flight deck, inside the airport, or outside the airport's boundaries. Finally, and ultimately, are we confident that arming pilots yields potential gain for passenger security and safety that justifies the potential risk to passenger security and safety?

Mr. Chairman, Senator McCain, and Members of the Committee, now that the initial bills have passed I urge you carefully to consider these and other unaddressed concerns before this proposal is considered in Conference. In addition, I implore you to give me the flexibility to plan this program with care, implement it efficiently, and provide needed support to make sure it improves our overall security posture. I hope that we can work together with the Conferees on this proposal. The President has shown his willingness to engage in this dialogue by including \$20 million in his recent Fiscal Year 2003 Budget Amendment to plan for such a program should one be initiated.

Mr. Chairman, earlier in my testimony I mentioned that while we are keeping our eye on the ball to meet the statutory deadlines for passenger screening and screening checked baggage for explosives, we have also made strides in the area of transportation security for other modes of transportation such as ports, rails and trucks. I would like briefly to discuss some of our initiatives. In order to ensure that no terrorist or other individual is successful in causing harm or significant disruption to the maritime and surface transportation systems, our Office of Maritime

and Land Security will capitalize on existing programs involving the other modes of transportation and transportation infrastructure, as well as stakeholder relationships by identifying methods and measures already in place to implement standards. We are currently engaged in outreach with maritime and surface industry stakeholders. Discussions thus far have involved representatives from trucking, freight railroads, maritime shipping, intercity bus companies, and mass transit as well as representatives of state and local security to identify best practices and the need for security enhancements.

In addition we are working to develop a comprehensive Risk-Based Management program with Transportation Security Conditions (TRANSECs) that is intermodal, interdependent and international in nature, is integrated with the Homeland Security Advisory system, and is responsive to the unique needs of each transportation mode. We will establish a program of prevention, protection, and emergency preparedness for non-aviation modes that includes the capacity to respond to threats and to events. This will provide for the restoration of transportation services and for the restoration of public confidence in our transportation system.

Our Office of Maritime and Land Security will also oversee a coordinated program of vulnerability assessments by identifying critical infrastructure, conducting assessments according to established standards, and overseeing security enhancements. As a first step in this effort, TSA in conjunction with the Coast Guard and MARAD is currently overseeing port security assessments and enhancements by virtue of grants that we awarded in June of this year with funds provided to TSA by the Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, 2002, enacted last December.

As part of our initiative to bring common sense to aviation security, the Department of Transportation has asked that this Committee consider a number of technical corrections and improvements to ATSA. I would like to underscore two of those improvements. The first concerns the deployment of Federal law enforcement officers at every passenger security-screening checkpoint by November 19 of this year. According to ATSA, by November 19 we must have “a sufficient number of Federal screeners...and Federal law enforcement officers to conduct the screening of all passengers and property under section 44901” of Title 49, United States Code. This requirement would seem to preclude TSA from continuing to rely on the resources of state and local law enforcement officers at certain airports, as we have been doing since February 17 of this year when TSA assumed civil aviation security functions from the FAA. This does not make common sense. In some of the smaller airports in Categories III and IV, we may not have a need for full-time Federal law enforcement officers. We may be able to handle the security functions at these smaller airports under reimbursable agreements with the state and local law enforcement agencies. At other airports, especially where state and local law enforcement officers can enforce federal laws on aviation security, or where there are equivalent state and local laws, TSA would like the option of continuing to reimburse state and local law enforcement officers for their services. Accordingly, our legislative proposal will simply remove the requirement that the law enforcement officers be federal employees in all cases.

The second major area where we are seeking legislative assistance from this Committee concerns the aviation security service fees established by Section 118 of ATSA. TSA has requested

Congress to legislatively establish this fee at a flat rate of \$750 million per year, which TSA will apportion among air carriers based on market share or any other appropriate measure. TSA has also requested the authority to adjust the Air Carrier Fee starting fiscal year 2005 to reflect the most current economic conditions, inflation, or other reasonable factors. I ask for the support of this Committee in approving this important initiative. Our technical corrections package includes several other important proposals to fine-tune this important legislation. I thank the Committee in advance for your early consideration of these measures.

Mr. Chairman, Senator McCain, and Members of the Committee. We have accomplished much in the short time of TSA's existence. There remains much to do. Secretary Mineta, my team and I are fully dedicated to this important task. I appreciate the support I have received from this Committee and I look forward to continuing to work with you to see this effort through. I will be pleased to answer your questions.

¹ The Aviation and Transportation Security Act requires the establishment of a pilot program under which the screening of passengers and property at selected airports will be carried out by a qualified private screening company under contract with the TSA. TSA requested applications of airports interested in participating in the pilot program. The TSA selected the following five airports: San Francisco International Airport, Kansas City International Airport, Greater Rochester International Airport, Jackson Hole Airport, and Tupelo Airport. On July 21, 2002, we issued a Presolicitation Notice requesting interested companies to submit a capabilities letter. The Presolicitation Notice briefly outlined the program needs and the minimum requirements for companies to qualify to participate in the program. On August 13, 2002, we issued the Request For Proposal (RFP) to all of the companies that submitted capabilities letters. The RFP contains all of the requirements of the program and the requirements for submitting a full proposal to participate in the program. All proposals are due to the TSA by September 6, 2002. We anticipate awarding a contract or contracts for screening at all five airports by October 1, 2002.